

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eliana Behar	Team: Squad #1	CCRB Case #: 201904273	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/15/2019 6:30 PM	Location of Incident: § 87(2)(b)	Precinct: 121	18 Mo. SOL 11/15/2020	EO SOL 7/2/2021	
Date/Time CV Reported Thu, 05/16/2019 9:27 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 05/16/2019 9:27 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			121 PCT
2. POM James Moussa	31415	963664	121 PCT
3. LT Daniel Green	00000	936071	121 PCT
4. POM Frank Callaghan	21843	946816	121 PCT
5. POM Nicholas Canepa	01262	950150	121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brian Johnson	14496	930425	121 PCT
2. POM Sean Mondello	05194	956943	121 PCT
3. POF Alexandra Florida	08608	956651	121 PCT
4. SGT Sean Tiernan	04001	953482	121 PCT
5. POM Nicholas Behar	30633	964918	121 PCT
6. POF Diana Nerguti	17813	964679	121 PCT
7. POM Alfred Lobaito	08420	943494	121 PCT
8. SGT Vincent Mevo	4326	952013	121 PCT
9. POM Nigel Walters	23558	963321	121 PCT
10. POF Nicole Giglio	02974	963540	121 PCT
11. POM Anthony Doyle	31277	963494	121 PCT
12. POM John Pignatelli	06641	959075	121 PCT
13. POM John Addington	03012	949967	121 PCT
14. POM Devon Newland	15106	964185	MED DIV
15. POM Gregory Valentin	4284	957239	121 PCT
16. POM Michael Galluccio	27150	965118	121 PCT
17. POM Brandon Nickel	15690	961977	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A. POM James Moussa	Force: Police Officer James Moussa used physical force against § 87(2)(b)	
B. Officers	Abuse: Officers threatened § 87(2)(b) with the use of force.	

Officer(s)	Allegation	Investigator Recommendation
C.LT Daniel Green	Discourtesy: Lieutenant Daniel Green spoke discourteously to § 87(2)(b)	
D.POM Frank Callaghan	Abuse: Police Officer Frank Callaghan refused to provide his name to § 87(2)(b)	
E.POM Frank Callaghan	Abuse: Police Officer Frank Callaghan refused to provide his shield number to § 87(2)(b)	
F.POM Nicholas Canepa	Force: Police Officer Nicholas Canepa used a chokehold against § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

## Case Summary

On May 16, 2019, § 87(2)(b) filed this complaint on behalf of himself and § 87(2)(b)

On May 15, 2019, at around 6:30pm, a group of officers from the 121<sup>st</sup> Precinct responded to a fight at § 87(2)(b) part of the § 87(2)(b) NYCHA complex in Staten Island. § 87(2)(b) was standing near the fight, and PO James Moussa pushed § 87(2)(b) (Allegation A: Force-§ 87(2)(g)). While officers were trying to place § 87(2)(b) in handcuffs, unknown officer(s) threatened to tase § 87(2)(b) (Allegation B: Abuse of Authority-§ 87(2)(g)). After § 87(2)(b) was placed in handcuffs, Lieutenant Daniel Green told § 87(2)(b) to “stop the bullshit” (Allegation C: Discourtesy-§ 87(2)(g)). PO Frank Callaghan refused to provide his name and shield number to § 87(2)(b) (Allegations D and E: Abuse of Authority-§ 87(2)(g)). As § 87(2)(b) was being removed to a police vehicle, PO Nicholas Canepa placed his hand on the front of § 87(2)(b) throat (Allegation F: Force-§ 87(2)(g)). § 87(2)(b) was arrested and charged with obstructing governmental administration, resisting arrest, and disorderly conduct.

The investigation obtained BWC footage of this incident from 17 officers. There are 24 BWC videos in total (Board Review 01-24).

## Findings and Recommendations

### Allegation (A) – Force: Police Officer James Moussa used physical force against § 87(2)(b)

It is undisputed that on May 15, 2019, at around 6:30pm, § 87(2)(b) was involved in a physical altercation with an unknown male after someone allegedly threw bleach on § 87(2)(b) 7-year-old daughter. A 911 call generated an event for a dispute with a firearm in which the caller stated that there was a fight with 16 males and females present, along with knives and firearms (Board Review 50). § 87(2)(b) who runs an after-school program at § 87(2)(b) which § 87(2)(b) daughter attends, was at the scene of the altercation and was there when police responded. § 87(2)(b) stood close by the officers as they placed § 87(2)(b) in handcuffs.

§ 87(2)(b) stated that he was standing about 25 feet away from § 87(2)(b) and next to an unidentified female while § 87(2)(b) fought the male. § 87(2)(b) was holding his iPad and iPhone while telling § 87(2)(b) to think about his daughter in order to deescalate the situation. § 87(2)(b) remained 25 feet away from § 87(2)(b) when about 10-12 officers arrived on scene. At this point, an officer who was a white, 6’4” male, who looked to be in his 20s with blonde hair and a slim build, used his arm to push § 87(2)(b) out of the way, causing him to stumble back a few feet. His iPad and iPhone were knocked out of his hand and fell onto the floor. This officer then pushed § 87(2)(b) a second time and told him to “stay away.” § 87(2)(b) sustained a sore back from the push (Board Review 25).

§ 87(2)(b) was uncooperative with the investigation.

PO Alfred Lobaito’s BWC shows that when he arrives on scene several officers are standing around § 87(2)(b) and § 87(2)(b) is standing right next to and face to face with § 87(2)(b). § 87(2)(b) is a young black male with a slim build who is wearing a red do-rag and a blue t-shirt. § 87(2)(b) is a young black male with short curly hair and a medium build who is wearing a black and white t-shirt. Starting at the 00:31 mark of the video, officers, including PO Lobaito, are seen trying to place § 87(2)(b) hands behind his back. Meanwhile § 87(2)(b) continues standing

right next to § 87(2)(b) with his arms outstretched into the physical struggle between § 87(2)(b) and the officers. An officer on scene then tells § 87(2)(b) to “back up” and § 87(2)(b) walks away once § 87(2)(b) is taken to the ground (Board Review 01).

PO Callaghan’s BWC begins upon his arrival at § 87(2)(b). As PO Callaghan approaches, there are already several officers on scene, and three officers on the ground with § 87(2)(b) placing him in handcuffs. There is also a female bystander, and § 87(2)(b) standing approximately 10 feet from where officers are on the ground with § 87(2)(b). § 87(2)(b) is seen with an iPad and paper towels in his left hand. At 00:24, PO James Moussa places two hands on § 87(2)(b) chest and slowly pushes him back in a walking motion and away from the arrest in progress. § 87(2)(b) does not stumble, nor does his iPad fall to the ground. No conversation is heard as the audio does not engage until 00:30. PO Callaghan then stands in front of § 87(2)(b) and tells him multiple times to stay back as he tells § 87(2)(b) to think of his daughter and tries to explain the issue to the officers. PO Callaghan puts his right arm out in front of him twice while telling § 87(2)(b) to stay back but does not push him. PO Callaghan stays with § 87(2)(b) until 02:40. PO Callaghan then walks away toward the entrance of § 87(2)(b). § 87(2)(b) remains visible in the background of the video and it does not appear that any other officers speak to § 87(2)(b) (Board Review 08).

In PO Moussa’s BWC he arrives on scene while several officers are on the ground with § 87(2)(b) trying to place him in handcuffs. About a foot away from where the officers are handcuffing § 87(2)(b), § 87(2)(b) is standing and appears to be arguing with PO Diana Nerguti. § 87(2)(b) makes physical contact with PO Nerguti and walks into her and she takes hold of his two hands. § 87(2)(b) is then out of the BWC viewpoint, and PO Moussa faces the ongoing arrest. At 00:16 PO Moussa turns around, facing away from the arrest, and § 87(2)(b) approaches PO Moussa, and is moving closer to the ongoing arrest. PO Moussa then places both of his hands on § 87(2)(b) chest and pushes him backward. § 87(2)(b) moves back a few feet but does not stumble or fall (Board Review 10).

Even after viewing his BWC, PO Moussa did not recall the interaction in which he pushed § 87(2)(b) though he stated that he was standing close to the arrest and likely pushed § 87(2)(b) back to prevent him from interfering with the arrest (Board Review 28).

Based on PO Callaghan’s pedigree information that he provided during his interview, PO Callaghan is a 33-year-old, 6’6” tall white male who weighs 225lbs. He has brown hair and brown eyes. PO Moussa, according to his pedigree information is a 5’8” white male with black hair. While PO Callaghan fits the physical description provided by § 87(2)(b), the BWC footage shows PO Moussa push § 87(2)(b) in a time and manner similar to that described by § 87(2)(b). There is no BWC footage that shows PO Callaghan pushing § 87(2)(b). Therefore, the physical force allegation was pled against PO Moussa (Board Review 38).

According to Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of service or a third person, to place a person into custody or prevent escape from custody. In all applications, the force must be reasonable under the circumstances (Board Review 29).

§ 87(2)(b) was standing, at times, inches away from an active arrest and told to back away from this location. He was also yelling to officers and § 87(2)(b) while officers were trying to place § 87(2)(b) in handcuffs during a significant struggle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B)—Abuse of Authority: Officers threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) stated that he saw 10-12 officers on top of § 87(2)(b) but did not see how § 87(2)(b) got in that position. While § 87(2)(b) was on the ground, § 87(2)(b) heard tasers being deployed 3-4 times within one minute, which he described as a sound of electricity. § 87(2)(b) did not see any officers draw or deploy their tasers (Board Review 25).

PO Behar's BWC shows that as he approaches § 87(2)(b) PO Nigel Walters is separating out an unidentified black male in a white t-shirt from a group of several civilians, including adult males and females, and § 87(2)(b) intermingled with at least 10 officers (Board Review 06).

In Lt. Daniel Green's BWC, 10-12 officers are shown running to the front of § 87(2)(b). At 00:38, PO Lobaito and two other officers are seen physically taking hold of § 87(2)(b) arms and pulling him to the ground, meanwhile § 87(2)(b) is yelling at the officers to get off him and is flailing his body and his arms. At 00:48 § 87(2)(b) is lying on the concrete, flat on his back. § 87(2)(b) is not in handcuffs yet, and PO Vincent Mevo tells § 87(2)(b) to put his hands behind his back and to stop yelling. At 01:08 an officer, who cannot be seen, yells "I'll tase him" and at 01:09 an officer, who also is unseen, is heard yelling "drive stun him" and Lt. Green responds "no." There is no sound of a taser being deployed at any time. At 01:13 § 87(2)(b) is picked up from the ground and stands upright while PO Nicholas Behar holds onto his arms. At 01:16 an officer is heard saying "stop fighting us" to § 87(2)(b) and he is placed in handcuffs (Board Review 04).

PO Lobaito's BWC captures the same interaction from a different angle. At 00:43, an officer is heard yelling "tase him, tase him" however there is no sound of a taser being deployed and no taser is shown on video. At this same moment Lt. Green, PO Lobaito, PO Mevo, and PO Behar are on the ground with § 87(2)(b) who is yelling at them, trying to place him in handcuffs. An unknown officer tells § 87(2)(b) to put his hands behind his back. At this same time, PO Brian Johnson, who was knocked down during the apprehension, is helped up by PO Nigel Walters. While PO Walters helps lift PO Johnson up from the ground, PO Johnson has his left hand on the front of his head and appears to be injured. At 01:10, PO Behar, PO Mevo, and Lt. Green lift § 87(2)(b) up from the ground, and he is handcuffed (Board Review, 01).

Neither PO Lobaito, PO Nerguti, PO Moussa, nor PO Callaghan recognized the voice of the individual who said "tase him" or witnessed any tasers drawn, pointed, or used during this incident. No BWC showed any tasers drawn, pointed, or used (Board Review 26, 27, 28, 30).

PO Lobaito stated that when he arrived on scene, PO Johnson, PO Moussa, PO Sean Mondello, and PO Canepa were on the floor with § 87(2)(b) trying to place him in handcuffs. § 87(2)(b) was flailing his arms and shouting while the officers were telling him to stop resisting. § 87(2)(b) did not comply and would not give the officers his hands. PO Lobaito stated that an officer was injured while trying to handcuff § 87(2)(b). PO Lobaito did not have physical contact with § 87(2)(b) during this incident. PO Lobaito did not draw his taser at any point or make any comments about using his taser. PO Lobaito could not recall if any officer made any reference to using a taser on § 87(2)(b). PO Lobaito said that an officer would have been justified in using a taser on § 87(2)(b) during this incident to prevent officers from being injured (Board Review 30).



PO Canepa testified that when he arrived on scene several officers were already crowded around the entrance of § 87(2)(b) trying to place § 87(2)(b) in handcuffs, while § 87(2)(b) was kicking and fighting the officers. PO Canepa stood back and watched as officers tried to place § 87(2)(b) in handcuffs. PO Canepa saw PO Mondello and PO Giglio get knocked over and injured. After § 87(2)(b) was placed in handcuffs, he continued to kick his legs and had to be physically carried by his arms and legs to the police vehicle (Board Review 31).

PO Callaghan, PO Nerguti, and PO Moussa stated that they were not directly involved in placing § 87(2)(b) in handcuffs. Instead, they were facing the opposite direction making sure that bystanders stood back while other officers placed § 87(2)(b) in handcuffs. PO Callaghan, PO Nerguti, and PO Moussa did not see or hear any officers deploy their tasers during this incident, nor did they hear any officers saying that they would tase § 87(2)(b) (Board Review 26, 27, 28).

Three Line of Duty injury reports were filed after this incident by PO Mondello, PO Giglio, and PO Johnson. The reports noted that all three of these officers were injured during the forcible takedown of § 87(2)(b). PO Mondello hit his head on the concrete and sustained a concussion, PO Giglio hit her knees and elbows on the concrete, and PO Johnson injured his shoulder and rotator cuff (Board Review 39). Eight officers, including PO Canepa, PO Lobaito, PO Mondello, PO Giglio, PO Johnson, and Lt. Green filled out TRI reports. All the TRI reports noted that there was no use of a conducted electric weapon (CEW). However, they all documented that § 87(2)(b) used force against the officers, including wrestling/grappling and pushing/shoving. The officers used a forcible takedown of § 87(2)(b) in defense of themselves and other officers, and to overcome § 87(2)(b) resistance. Finally, the TRIs document the above-mentioned injuries to the officers and a lack of injury to § 87(2)(b) (Board Review 40-45).

§ 87(2)(g) Based upon a review of the TRI reports and the BWC, no officer used a taser against § 87(2)(b) or cycled (pulled the trigger without engaging it) a taser during the incident. An officer/officers verbally suggested the use of a taser against § 87(2)(b) while officers were attempting to place him in handcuffs and before he was successfully handcuffed.

Patrol Guide Procedure 221-01 states that “force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.” Police officers should consider the following factors when determining whether the use of force is reasonable. The factors include: the nature and severity of the crime, actions taken by the subject, duration of the actions, the immediacy of perceived threat, whether the subject is actively resisting custody or attempting to evade arrest by flight, the number of subjects in comparison to the number of officers, the size, age, and condition of the subject compared the officer’s, violent history of the subject, presence of hostile crowd, and whether the subject is under the influence (Board Review 29).

The use of a CEW is an act of force, and therefore the same factors from Patrol Guide 221-01 should be considered when using a CEW. According to Patrol Guide Procedure 221-08, prior to discharging a CEW an officer is to issue “an appropriate verbal warning, consistent with personal safety, to the intended subject and other members of the service present.” Additionally, a CEW should only be used against a person who is actively resisting, exhibiting active aggression, or to prevent an individual from physically injuring themselves or others (Board Review 32).

§ 87(2)(g)

§ 87(2)(b) resisted physically and refused multiple verbal requests to comply. While § 87(2)(b) physically resisted, three officers were injured. There were also several civilians on scene, one of which had been engaged in an altercation with § 87(2)(b) § 87(2)(b) and others were in close proximity and trying to approach the officers and § 87(2)(b) during the apprehension. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (C)—Discourtesy: Lieutenant Daniel Green spoke discourteously to § 87(2)(b).**

In PO Lobaito's BWC, § 87(2)(b) is placed in handcuffs and shortly after, at the 01:35 mark Lt. Green tells § 87(2)(b) in a calm tone, to "stop, stop, stop the bullshit all right?" (Board Review 01). In PO John Pignatelli's BWC, which captures this incident from a different angle, § 87(2)(b) is being placed in handcuffs while officers tell him to "relax" and to stop fighting them. Once § 87(2)(b) is placed in handcuffs, at approximately 01:15, he jerks his body while stepping forward. At this point Lt. Green, who is holding § 87(2)(b) left arm, says to him "listen you've got to stop. Stop, stop the bullshit all right?" (Board Review 05).

According to Patrol Guide Procedure 200-02, the NYPD's mission is to "treat every citizen with compassion, courtesy, professionalism, and respect, while officially rendering police services and enforcing the law impartially" (Board Review 54). NYPD Department Advocate Officer (DAO) case 2017-17276 states that discourteous language can be excused in the course of a violent confrontation such as dissuading a subject from resisting arrest (Board Review 55).

Based on the BWC, Lt Green was giving § 87(2)(b) instructions to remain calm and cooperative during a violent confrontation with police officers. § 87(2)(b) had just injured three officers and fought with several police officers who were trying to place him in handcuffs. Even after being placed in handcuffs, he continued to yell, jerk his body, and step forward while Lt. Green and the other officers were holding onto his arms. Lt. Green's comment to "stop the bullshit," which was stated in a respectful tone, was made in attempt to get § 87(2)(b) to cooperate during a lawful arrest where he was resisting and acting violent. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (D)—Abuse of Authority: Police Officer Frank Callaghan refused to provide his name to § 87(2)(b)**

**Allegation (E)—Abuse of Authority: Police Officer Frank Callaghan refused to provide his shield number to § 87(2)(b)**

§ 87(2)(b) stated that after § 87(2)(b) was placed in handcuffs and escorted to the police vehicle, § 87(2)(b) remained standing in front of § 87(2)(b) and asked PO Callaghan for every officer's name and shield number. The officer appeared to acknowledge § 87(2)(b) request by looking at him, however he did not provide § 87(2)(b) with his own, or any of the officers' names or shield numbers (Board Review 25).

In PO Callaghan's BWC, at 02:05, § 87(2)(b) asks PO Callaghan for the badge numbers of every officer present. PO Callaghan acknowledges this request by saying "uh huh" and then § 87(2)(b) says again at 02:12, "I need the badge number of any officers present. PO Callaghan then says "okay" and that the incident is all recorded. § 87(2)(b) then responds by saying "I'm not asking if it

is all recorded” and continues to argue with PO Callaghan. PO Callaghan responds by saying “you can go to the precinct and make a complaint.” At no point does PO Callaghan provide his, or any officer’s, name or badge number to § 87(2)(b) (Board Review 08).

PO Callaghan testified that he responded to § 87(2)(b) and stood in front of § 87(2)(b) and an unknown female bystander, who he told to stay back multiple times. § 87(2)(b) said “I want everybody’s shield numbers” to PO Callaghan, and PO Callaghan responded that § 87(2)(b) could go to the precinct to obtain this information. PO Callaghan testified that he did not provide § 87(2)(b) with his own name or shield number, or the names or shield numbers of any officers present because it was an active scene and he could not go around and obtain every officer’s shield number. PO Callaghan stated that § 87(2)(b) did not ask him specifically for his name or shield number and mentioned that his uniform had his name and shield number displayed. Typically, if an individual asks PO Callaghan specifically for his name or shield number, he provides this information. However, since § 87(2)(b) request was for everybody’s name and shield number he was not required to answer. PO Callaghan knew that if he told § 87(2)(b) to go the precinct directly, a supervisor would have to give him all the information he requested (Board Review 26).

According to Patrol Guide 203-09, officers are to courteously and clearly state their rank, name, shield number and command, or otherwise provide them, to anyone who requests this information. Officers must also allow the person ample time to note this information (Board Review 51).

Although § 87(2)(b) asked for the shield numbers of every officer present and did not specifically ask PO Callaghan for his name or shield number, § 87(2)(b) spoke with PO Callaghan alone and PO Callaghan fit the category of officers whose names § 87(2)(b) was seeking. While PG 203-09 does not require an officer to provide the names of other officers, it requires individual officers to provide their own information. PO Callaghan acknowledged § 87(2)(b) request by saying “uh huh” and “okay” demonstrating that he heard § 87(2)(b) question, however he did not provide § 87(2)(b) with his name or shield number.

§ 87(2)(g)

**Allegation (F)—Force: Police Officer Nicholas Canepa used a chokehold against § 87(2)(b).**

§ 87(2)(b) accused an officer of choking him per a review of PO Lobaito’s BWC.

In PO Lobaito’s BWC footage (Board Review 01), at 02:00, officers are carrying § 87(2)(b) by his arms and legs while he is positioned face up, to the police vehicle. The viewpoint is from behind and to the left of § 87(2)(b). PO Behar (white male with light brown hair) is seen on the right side of § 87(2)(b) body, holding onto his right shoulder with both hands. At 02:04, a left hand extends and slightly cups the front of § 87(2)(b) throat for less than one second (screenshot located in Board Review 52). At 02:05, the angle of PO Lobaito’s camera pans slightly to the left, and PO Canepa (white male with black hair) is seen directly in front of § 87(2)(b). At this point, § 87(2)(b) yells “yo, you grabbing me; you choking me?” and someone responds, “you’re spitting on me, cut it out.” § 87(2)(b) proceeds to yell “come on bro” three times.

PO Florida’s BWC footage (Board Review 13) captures the same interaction from an angle behind and to the right of § 87(2)(b). Beginning at 00:55 a group of six officer are positioned all around § 87(2)(b) body, holding onto his limbs, as they escort him to the police vehicle. Lt.



Green (bald white male in a white shirt) stands directly behind § 87(2)(b) head holding onto his back; PO Behar stands on § 87(2)(b) right side and holds his upper right shoulder; PO Canepa is to the right of PO Behar, standing face to face with § 87(2)(b) and holding onto the right side of § 87(2)(b) body; PO Lobaito (white male with dark brown hair, the tallest and heaviest of the officers) faces § 87(2)(b) and holds the left side of his body. At 01:01 PO Canepa is seen reaching upwards with his left arm, though his hand placement is not visible, and at 01:02 § 87(2)(b) says, “are you choking me?” and someone responds, “you’re spitting on me, bro” and § 87(2)(b) says, “come on bro” three times. At 01:06, PO Canepa wipes the left front side of his face on his left shoulder.

PO Canepa’s left arm is also visible in a position reaching toward § 87(2)(b) at 01:15 of PO Addington’s BWC (Board Review 11), though again, due to camera movement, the placement of his hand is not visible.

PO Canepa stated that he did not fully remember this incident. He was not recording with his BWC during this portion of the incident as his camera fell off as he initially ran to the scene. PO Canepa stated that § 87(2)(b) did not spit on him, and he did not recall anyone choking or placing their hands on the neck/throat of § 87(2)(b). After being shown PO Florida’s and PO Lobaito’s BWC, PO Canepa acknowledged observing himself raise his left arm in an upward motion, but did not recall what he was doing. He assumed that he was grabbing § 87(2)(b) arm because he was resisting being taken to the police vehicle. PO Canepa stated that he did not recall touching § 87(2)(b) throat or choking him (Board Review 31). PO Canepa stated that he did not recall seeing any officer place their hand on § 87(2)(b) neck or throat and could not identify whose hand was placed around § 87(2)(b) throat in the footage (Board Review 31).

Based on the BWC footage from PO Lobaito’s BWC, an officer placed his left hand on § 87(2)(b) throat. PO Florida’s and PO Addington’s BWCs show PO Canepa raising his left arm in an upward motion, and § 87(2)(b) then states “are you choking me” while facing PO Canepa. The investigation determined based on a preponderance of the BWC evidence, that PO Canepa was the officer who placed his left hand around § 87(2)(b) throat. Additionally, based on the immediate subsequent comment that § 87(2)(b) was spitting and PO Canepa wiped his face on his sleeve, the investigation also determined that § 87(2)(b) spit on PO Canepa.

Patrol Guide Procedure 221-01 states that members of service shall not use a chokehold, which includes, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air (Board Review 29).

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 46).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 47).
- PO Callaghan has been a member of service for 12 years and has been a subject in four prior CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- PO Moussa has been a member of service for three years and has no CCRB complaints against him.
- PO Canepa has been a member of service for eight years and has been a subject in seven prior CCRB complaints and 18 allegations, one of which was substantiated.
  - 201702922 involved a substantiated allegation of Discourtesy-Word against PO Canepa. The board recommended formalized training, and the NYPD imposed instructions.
  - § 87(2)(g)

### **Mediation, Civil and Criminal Histories**

- This complaint was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of July 27, 2020, the New York City Office of Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review 35).

Squad No.: 1

Investigator:	<u>Eliana Behar</u>	<u>Inv. Behar</u>	<u>04/01/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Mgr. Joy Almeyda</u>	<u>4.1.21</u>
	Signature	Date
		Print Title & Name

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date